

**United States Department of Labor  
Employees' Compensation Appeals Board**

---

**T.M., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Galesburg, IL, Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 18-1443  
Issued: March 20, 2019**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On July 20, 2018 appellant filed a timely appeal from a June 22, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether appellant has met his burden of proof to establish a left toe condition causally related to the accepted April 27, 2018 employment incident.

---

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the June 22, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

### **FACTUAL HISTORY**

On April 27, 2018 appellant, then a 49-year-old carrier technician, filed a traumatic injury claim (Form CA-1) alleging that on that date he stepped on a “shingles nail” while in the performance of duty, which caused a “small poke in toe.” He did not stop work.

Appellant first sought treatment on April 27, 2018 at the Galesburg Cottage Hospital, where he was seen and discharged the same day. In a report of even date, Dr. Thomas Singel, an osteopathic physician Board-certified in emergency medicine, related that appellant was seen for a possible puncture wound to the foot. He recounted appellant’s statement that he felt something rubbing against his left toe. Appellant took off his shoe and found a nail sticking inside his shoe. He noted that the nail had not punctured the toe as he did not notice any blood. Dr. Singel related that appellant was given a tetanus shot.

An April 27, 2018 accident report completed by the postmaster, P.A., indicated that appellant stepped on a nail, which was a “rusty rotting nail and it scratched his toe.” She also noted that he had employing-establishment “approved shoes on with good tread.” P.A. related that appellant noticed something in his shoe at approximately 1:30 p.m. while delivering mail, and that he had received a tetanus shot and returned to work after obtaining treatment.

In a May 9, 2018 letter, the employing establishment controverted the claim based on the fact that the physician had not provided a diagnosis. It also requested that continuation of pay (COP) be disallowed.

An April 27, 2018 duty status report (Form CA-17), completed by a physician with an illegible signature, noted that appellant “stepped on nail-through shoe.” The physician indicated “no injury noted,” and wrote “none” for clinical findings.

By development letter dated May 22, 2018, OWCP advised appellant of the factual and medical evidence needed to establish the claim. It noted that he had not provided a detailed description of how the injury occurred. OWCP also noted that appellant failed to describe the physical location of the injury. For example, appellant did not identify whether it was the right or left toe. OWCP requested that he respond to the questions on an attached development questionnaire and submit medical evidence from a physician which provided an opinion supported by a medical rationale as to how the reported work incident caused or aggravated a diagnosed medical condition. It afforded appellant 30 days to submit the additional information. However, no further evidence was received.

By decision dated June 22, 2018, OWCP denied the claim. It found that appellant had established that he was a federal civilian employee who filed a timely claim and that the injury and/or event(s) occurred as described. However, appellant had not established the medical component of the third basic element, fact of injury. OWCP noted that he had not submitted evidence which contained a medical diagnosis in connection with the accepted April 27, 2018 employment incident. It concluded, therefore, that he had not met the requirements to establish an injury as defined by FECA.

## **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA,<sup>3</sup> that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>4</sup> These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>5</sup> To determine whether an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.<sup>6</sup> Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.<sup>7</sup> An employee may establish that an incident occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.<sup>8</sup>

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between a diagnosed condition and the specific employment factor identified by the employee.<sup>9</sup>

## **ANALYSIS**

The Board finds that appellant has not met his burden of proof to establish a left toe condition causally related to the accepted April 27, 2018 employment incident.

Dr. Singel noted that appellant was seen for a possible puncture wound, but that appellant had described a rubbing sensation against his left toe. He did not observe an actual puncture, but

---

<sup>3</sup> *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>4</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>5</sup> *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>6</sup> *A.D.*, Docket No. 17-1855 (issued February 26, 2018).

<sup>7</sup> *D.M.*, Docket No. 18-1434 (issued February 22, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>8</sup> *G.N.*, Docket No. 18-0403 (issued September 13, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000). *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

<sup>9</sup> *C.C.*, Docket No. 18-1099 (issued December 21, 2018).

provided a tetanus shot. The Board finds that the medical report of Dr. Singel lacks a firm diagnosis and does not contain the necessary rationalized medical opinion regarding causal relationship. Therefore, Dr. Singel's medical report is of limited probative value.<sup>10</sup>

An April 27, 2018 duty status report, completed by a physician with an illegible signature, revealed that appellant "stepped on nail-through shoe." The Board has held that unsigned reports or reports that bear illegible signatures cannot be considered as probative medical evidence because they lack proper identification.<sup>11</sup> Therefore, this report is insufficient to establish appellant's claim.

The medical reports appellant submitted do not adequately address how the April 27, 2018 employment incident caused a diagnosed medical condition and; therefore, these reports are insufficient to establish his claim.<sup>12</sup> Accordingly, appellant has not met his burden of proof to establish his traumatic injury claim.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish a left toe condition causally related to the accepted April 27, 2018 employment incident.

---

<sup>10</sup> See *J.K.*, Docket No. 18-1508 (issued February 5, 2019).

<sup>11</sup> *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004).

<sup>12</sup> *D.H.*, Docket No. 17-1913 (issued December 13, 2018).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 22, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 20, 2019  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board